

Having reviewed the entire record and considered the arguments of the parties, the Appeals Board finds for purposes of preliminary hearing as follows:

A Preliminary Hearing was held on August 22, 1995 before Special Administrative Law Judge William F. Morrissey. The transcript of that Preliminary Hearing bears both Docket Numbers 177,393 and 201,872. The case is styled Salvador Romero, claimant versus U.S.D. No. 501, respondent and self-insured, and General Casualty, insurance carrier. Mr. Gregory Bien appeared for the respondent, U.S.D. No. 501 in its capacity as a self-insured party, and Mr. Ronald Laskowski appeared for respondent U.S.D. No. 501 and its insurance carrier, General Casualty. It is clear from the record that the August 22, 1995 Preliminary Hearing was a consolidated hearing of both docketed claims.

Docket Number 177,393 pertains to a January 1993 back injury for which U.S.D. No. 501 is the respondent and General Casualty is the insurance carrier. The Form E-3 Application for Preliminary Hearing alleges accident occurring “. . . on or about 10-92 and seris (sic) of accidents beginning [exact beginning date unknown] and culminating in disability on or about 05-10-93.”

In Docket Number 201,872 a series of accidents with an unknown date of onset is also alleged, culminating on or about April 14, 1995.

The Order for Compensation entered by Special Administrative Law Judge William F. Morrissey on August 23, 1995 is styled “Salvador Romero, Claimant VS U.S.D. # 501, Respondent and U.S.D. # 501, Self-Insurance Fund, Insurance Carrier.” It bears Docket Number 201,872. No mention is made of General Casualty Company as an insurance carrier, nor is Docket Number 177,393 reflected in said Order, although Mr. Laskowski is copied thereon.

An Application for Review Pursuant to K.S.A. 44-551 was filed by Mr. Gregory J. Bien on August 23, 1995. The Certificate of Service shows a copy of the Application for Review having been mailed to the Special Administrative Law Judge, claimant's counsel and the Workers Compensation Administrator for respondent, however, a copy was not mailed to Mr. Laskowski, attorney for respondent and General Casualty. It purports to seek “. . . review of the Preliminary Hearing decision of the Honorable William Morrissey, Administrative Law Judge, rendered August 22, 1995 (sic).” However, it bears a Docket Number of 187,675 which is an obvious error because it pertains to a claim completely unrelated to these parties and proceedings. The Respondent's Brief In Support of Application for Review filed by Mr. Bien on September 18, 1995 bears Docket Numbers 177,393 and 201,872. It is styled consistent with the preliminary hearing transcript showing U.S.D. No. 501 as respondent and self-insured and, in addition, shows General Casualty as the insurance carrier. Nevertheless, it again fails to include Mr. Laskowski on the Certificate of Service.

The Appeal Brief of Respondent, U.S.D. 501 and its Insurance Carrier, General Casualty In Support of Administrative Law Judge Morrissey's Preliminary Order, filed November 20, 1995, bears both Docket Numbers 177,393 and 201,872. It shows U.S.D. No. 501 to be the respondent and General Casualty to be the insurance carrier. Its caption does not include U.S.D. No. 501 as a self-insured. It does include the name of Mr. Gregory J. Bien among those listed in the Certificate of Service.

Although there are issues raised concerning whether timely notice of accident was given and whether accident arising out of and in the course of employment was proven, the primary thrust of respondent's appeal in Docket Number 201,872 goes to whether a new accident occurred or whether instead claimant's current symptoms are a natural consequence of his original injury which was the subject of Docket Number 177,393. The Appeals Board cannot determine from the Order for Compensation entered by the Special Administrative Law Judge whether or not that issue was actually resolved. It could, perhaps, be assumed that by implication a new accident was found to have occurred in Docket Number 201,872 since the respondent and General Casualty, its insurance carrier in Docket Number 177,393, are not mentioned. However, it is clear from the record that the August 22, 1995 Preliminary Hearing was conducted as a consolidated hearing on both docketed claims. The Judge's Order completely ignores one of those two claims. A separate Order, in Docket Number 177,393, was not entered such that the Appeals Board can reasonably conclude that the Special Administrative Law Judge made a negative finding as to the issue of whether claimant's present need for temporary total disability compensation and medical benefits arises as a natural consequence of that earlier injury. However, beginning on page 50 of the Preliminary Hearing Transcript Judge Morrissey specifically finds a new accident occurred, and he also established the date of accident as being a period culminating on or about April 14, 1995. From this finding a conclusion can be reached that there was timely notice of accident given because the employer had knowledge that the reason claimant went to the emergency room in April of 1995 was for a work-related back condition. The respondent does not dispute this; only that claimant did not report the new accident of April 14, 1995 until claimant prepared an Employee Injury Report form on May 17, 1995. This was clearly within the seventy-five (75) days allowed under K.S.A. 44-520 where just cause is shown to exist. If respondent did not have sufficient notice of the accident, from the initial report, then the fact that claimant initially reported his injury as an aggravation of his prior work-related injury instead of as a new claim clearly warrants a finding of just cause for claimant's failure to report a new accident within ten (10) days.

The Appeals Board finds from the medical records and reports in evidence, together with the testimony of the claimant, that claimant did suffer an aggravation of his pre-existing back condition such that his present injury should be treated as a new and separate accident, to be compensated under Docket Number 201,872.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that these cases should be, and are hereby, affirmed and the Order of Special Administrative Law

Judge William F. Morrissey dated August 23, 1995 remains in full force and effect as to both docketed claims.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Gregory J. Bien, Topeka, Kansas
Beth Regier Foerster, Topeka, Kansas
Ronald J. Laskowski, Topeka, Kansas
John C. Peterson, Topeka, Kansas
William F. Morrissey, Special Administrative Law Judge
Philip S. Harness, Director